SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

LC2003-000208-001 DT

03/03/2004

HONORABLE MICHAEL D. JONES CLERK OF THE COURT P. M. Espinoza

Deputy

| FILED: | | | | |
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STATE OF ARIZONA GARY L SHUPE

V.

DAVID LANDEROS (001) MICHAEL J DEW

PHX CITY MUNICIPAL COURT REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

PHOENIX CITY COURT

Cit. No. #6096141

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO

DOB: 06/10/69

DOC: 07/20/02

This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on January 12, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the memoranda submitted by counsel.

The only issue raised by the Appellant, David Landeros, in this case is the failure of the trial judge to inform Appellant of those constitutional rights that he waived by submitting his case to the trial judge on stipulated evidence. The trial judge also failed to determine if such a Docket Code 512

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waiver was intelligently and voluntarily made. Appellee concurs with the position urged by Appellant and concedes the error.

It is the responsibility of the trial judge to inform a criminal defendant of all of the constitutional rights enumerated in State v. Avila and Boykin v. Alabama as the submission to the trial court is tantamount to a guilty plea. It appears from the record in this case that the Appellant was specifically advised only of his right to have a jury trial in the case. However, Appellant is not automatically entitled to have his conviction vacated and a new trial ordered if the Appellant was aware of these constitutional rights from another source prior to the submission to the trial judge. Therefore, the proper procedure for an appellate court is to remand the matter to the trial judge for a hearing to determine whether the Appellant was aware of all of the constitutional rights he waives by pleading guilty or submitting his case to the court on stipulated evidence. Should the trial judge find that the Appellant was not aware of all of the constitutional rights, then the trial judge shall vacate the judgment and sentence imposed, and set the matter for a new trial.

IT IS THEREFORE ORDERED remanding this matter back to the Phoenix City Court for a hearing consistent with this opinion.

| / s | / HONORABLE | MICHAEL D. JON | ES |
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| JUDICIAL | OFFICER OF T | THE SUPERIOR | COURT |

¹ 127 Ariz. 21, 617 P.2d 1137 (1980).

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² 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)